

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

WESLEY EUGENE WASHINGTON,

Petitioner,

No. CIV S 01-2397 JAM KJM P

vs.

DIANE BUTLER,

Respondent.

ORDER

Petitioner, a state prisoner proceeding pro se, has timely filed a notice of appeal of this court's denial of his application for a writ of habeas corpus (doc. no. 15). Before petitioner can appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

A certificate of appealability may issue under 28 U.S.C. § 2253 “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The court must either issue a certificate of appealability indicating which issues satisfy the required showing or must state the reasons why such a certificate should not issue. Fed. R. App. P. 22(b).

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1 For the reasons set forth in the magistrate judge's findings and recommendations
2 (doc. no. 13), petitioner has not made a substantial showing of the denial of a constitutional right.
3 Accordingly, a certificate of appealability should not issue in this action.

4 IT IS SO ORDERED.

5 DATED: July 21, 2008

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7 /s/ John A. Mendez
8 UNITED STATES DISTRICT JUDGE
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